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FEDERAL SUBSISTENCE BOARD
RURAL DETERMINATION PROCESS PUBLIC COMMENT
BEFORE HEARING OFFICER
PAUL MCKEE

Yupiit Piciryarait Cultural Center
Bethel, Alaska
February 25, 2015
7:00 o'clock p.m.

Presenter: Pippa Kenner
Office of Subsistence Management

Recorded and transcribed by:
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1 P R O C E E D I N G S

2
3 (Bethel, Alaska - 02/25/2015)

4
5 (On record)

6
7
8 MR. MCKEE: Okay. Well, I gave it a
9 few extra minutes here. I think we'll get started now.

10
11 Good evening, everyone. Thanks for
12 attending tonight's public meeting. This is an
13 opportunity for you all to provide input to the Federal
14 Subsistence Board's rural determination process.
15 Specifically the Board at the direction of the
16 Secretaries of Interior and Agriculture are seeking
17 your comment on a proposed rule on how the Board will
18 make determinations in the future.

19
20 The Board is not currently seeking
21 comments on which communities are rural or nonrural.
22 That part of the process will not come until after this
23 rulemaking is completed.

24
25 The Board is accepting comments on this
26 proposed rule until April 1st, 2015. Tonight will be
27 an opportunity for you to provide oral or written
28 comments.

29
30 My name is Chris McKee and I'm the
31 Wildlife Division chief for the Office of Subsistence
32 Management in Anchorage. Tonight I'm here to serve as
33 the meeting facilitator, so my job is to make sure that
34 everyone here who would like to make oral or written
35 comments on the proposed rule is able to do so.

36
37 The meeting has been scheduled to last
38 until 9:00 o'clock tonight in order to receive your
39 comments. We have with us tonight court reporter Tina,
40 and she will be recording and then transcribing your
41 comments.

42
43 During the comment portion of this
44 meeting we will not be answering any questions,
45 allowing us time to listen to and hear your comments.
46 Those comments will then be forwarded to the Board.

47
48 We've already had some meetings in some
49 other locations. So far we've had these same evening
50 meetings on this process in Anchorage, Kodiak, and

1 Nome. There's going to be one going on -- there was
2 one that went on last night in Naknek, and there's
3 going to be one in Kotzebue, Fairbanks, and Barrow, and
4 Yakutat. So they're going to be happening in every one
5 of the Regional Advisory Council regions.

6
7 Because of the importance of your
8 comments, it's necessary that we follow certain
9 procedures during the meeting. It's important that
10 every person present sign in so we have a complete
11 record of all persons who attended or participated in
12 this meeting. If you plan to make oral comments
13 tonight, please fill out a speaker card like this one.
14 They're up at the table there at the front of the room.
15 Also, if you're attending this meeting or submitting
16 comments on behalf of a group or organization, please
17 indicate the name of the group or entity that you
18 represent.

19
20 Again, let me emphasize that the
21 principle purpose of the public comment part of this
22 meeting is to receive information and comments from you
23 on the record. So please limit your comments. We were
24 going to have kind of a time limit, but since there
25 doesn't appear to be a tremendous amount of people
26 here, we'll try to be a little bit looser with that.

27
28 If we run out of time, you'll be able
29 to submit your comments in writing prior to April 1st
30 of this year. Handouts are available with information
31 on how to provide your written comments.

32
33 Tonight we have introducing -- giving
34 us a PowerPoint presentation is Pippa Kenner, who is an
35 anthropologist with the Office of Subsistence
36 Management. And then she'll be able to answer a few
37 questions after she gives this presentation.

38
39 So, Pippa, it's over to you.

40
41 MS. KENNER: Thanks, Chris. I have a
42 short PowerPoint for you and some information I'd like
43 to give you on this process.

44
45 How am I sounding? Did I unplug it?
46 Hello. There we go.

47
48 I'm going to be presenting a short
49 PowerPoint for you night to describe what the proposed
50 rule on rural determination is. I'd like to start with

1 a little background.

2

3 On October 23rd, 2009 Secretary of the
4 Interior Salazar announced the initiation of a
5 departmental review of the Federal Subsistence
6 Management Program in Alaska. And Secretary of
7 Agriculture Vilsack later concurred with this course of
8 action.

9

10 The review focused on how the program
11 is meeting the purposes and subsistence provisions of
12 Title VIII of the Alaska National Interest Lands
13 Conservation Act, or ANILCA, and how the program is
14 serving rural subsistence users as envisioned when it
15 began in the early 1990s. A year later, on August
16 31st, 2010, the Secretaries announced the findings of
17 the review, which included several proposed
18 administrative and regulatory reviews and/or revisions
19 to strengthen the program and make it more responsive
20 to those who rely on it for their subsistence uses.

21

22 One proposal called for a review with
23 Council input of the rural determination process, and,
24 if needed, recommendations for regulatory changes. The
25 Subsistence Regional Advisory Councils were briefed on
26 the Federal Register notice during their winter 2013
27 meetings, a couple of years ago; and at their fall 2013
28 meetings, the Councils provided a public forum to hear
29 from the residents of their regions deliberate on the
30 rural determination process and provide recommendations
31 for changes to the (indiscernible - interference from
32 teleconference).

33

34 MR. MCKEE: We're getting some feedback
35 from someone on the phone. Could you please mute your
36 phone. Star-6.

37

38 MS. KENNER: Okay. So we're at the
39 part where the Councils were providing recommendations
40 for changes to the rural determination process to the
41 Board. Testimonies from members of the public were
42 also recorded during separate public meetings held to
43 solicit comments on the rural determination process.
44 The Board held public meetings in Barrow, Ketchikan,
45 Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue,
46 Nome, and Dillingham. Government-to-government
47 consultations on the rural determination process were
48 held between members of the Board and tribes, and
49 additional consultations were held between members of
50 the Board and Alaska Native corporations.

1 So this presentation is to you in
2 Bethel, Alaska. The Board received 475 substantive
3 comments from various sources, including individual
4 citizens, members of Regional Advisory Councils, and
5 other entities or organization such as borough and
6 village governments.

7
8 So why are we doing this? This
9 proposed rule was initiated based on the findings of
10 the Secretarial review of the Federal Subsistence
11 Management Program. Rural determinations are
12 important, because only residents of areas identified
13 as rural are eligible to harvest under Federal
14 subsistence regulations on Federal public lands.

15
16 Under current regulations, the Board
17 aggregates communities or areas that are economically,
18 socially, and communally integrated, evaluates a
19 community's rural or nonrural status using guidelines
20 defined by the Secretaries such as population
21 thresholds and economic development. Under the
22 proposed regulations, the Board would evaluate a
23 community's nonrural status using a broad array of
24 relevant information and rely heavily on the
25 recommendations of Regional Advisory Councils, and
26 recognize regional differences. The proposed
27 regulatory change would increase flexibility in the
28 decisionmaking process and recognize the unique nature
29 of Alaskan communities.

30
31 So this is an example of what the old
32 regulations look like. They took up about a page. And
33 this is the new regulation. And we'll show you more of
34 that in just a minute.

35
36 So instead of using only population
37 thresholds, rural characteristics, aggregation of
38 communities, varying information sources, and
39 attempting to apply those statewide, the Board would
40 rely on the Councils and the public to provide
41 information to the Board and make rural determinations
42 on a regional level.

43
44 The proposed rule would eliminate the
45 mandatory 10-year rural review cycle, and instead
46 changes to rural status would be based on proposals
47 submitted to the Board.

48
49 Based on these comments, the Board
50 developed -- oh. Based on the comments that the Board

1 received, it developed a recommendation for the
2 Secretaries that would, if adopted, simplify the
3 regulation that guides the process for making
4 rural/nonrural determinations. And so I'll just read
5 it real quickly.

6
7 The rural determination process. (a)
8 The Board determines which areas or communities in
9 Alaska are nonrural, and current determinations are
10 listed in regulation. (b) All other communities and
11 areas are therefore rural.

12
13 A proposal submitted similar -- oh.
14 Instead of using only population thresholds, rural
15 characteristics, aggregation of communities and varying
16 information sources, and attempting to apply those
17 standards statewide, the Board would also rely on the
18 Councils and the public to provide any other relevant
19 information for consideration.

20
21 So if adopted, the proposed rule will
22 eliminate the mandatory 10-year rural review; and
23 instead a review of rural status of a community would
24 be conducted only in response to a proposal submitted,
25 similar to the proposals that are submitted to change
26 the fish and wildlife regulations. The Board would
27 give considerable weight to the input and
28 recommendations of the Councils. The public will
29 continue to be able to provide input at both the
30 Council and the Board level for each determination.

31
32 And that's the end of my public -- my
33 presentation, and we are welcoming your public comment.

34
35 MR. MCKEE: I think if anybody has any
36 questions for Pippa right now, now would be the time to
37 ask her as well. So does anybody have any questions
38 for Pippa.

39
40 (No comments)

41
42 MR. MCKEE: Okay. Did anybody fill out
43 one of these yellow forms that wants to testify. Just
44 one. Okay. Okay. Well, I know who you are, but
45 anyway please start with the presentation by stating
46 your full name, and please assist the recorder by
47 spelling your name. If you are affiliated with an
48 organization or group, please say so, and so that your
49 comments are accurately captured, please speak clearly
50 and into the microphone. And -- yep, that's it. So go

1 ahead.

2

3 MR. ROCZICKA: Quyana, Mr. Chairman.
4 I'm at the request of our tribal council chair. She's
5 unable to make it this evening due to a back injury or
6 she would have been here to address the -- oh, I'm
7 sorry.

8

9 For the record Greg Roczicka. I work
10 as the natural resource director for Orutsaramiut
11 Native Council. The last name is spelled R-O-C-Z-I-C-
12 K-A.

13

14 And just a few brief bullets if you
15 will that I'd like to put out. Yeah, we were involved
16 in the -- in this whole review process and being the
17 tribal government body for the Community of Bethel,
18 which has been under a fair level of scrutiny just
19 because of it being the largest community in the region
20 over the past several years, although a lot of our
21 growth does come from surrounding villages. And we
22 successfully defeated a proposal at the State level to
23 have Bethel be made a non-subsistence use area right
24 about the same time that this process was going on as
25 well.

26

27 The intent is very clear. The Board's
28 action appears very clear. Your presentation is very
29 clear. The main concern that we have that we feel
30 still needs to -- cause some concern and perhaps even
31 fear to us is what is the criteria that is going to be
32 developed for what is nonrural. Until once that's in
33 place, we can't really rest easy, because of that.

34

35 And I've read through the proposed
36 rule. What I see there appears very clear and straight
37 forward, but having been bitten and burned so many
38 times by having a few years later some kind of
39 interpretation come down that says, we know this is
40 what it says, but this is not what it really means.
41 And I have all the faith in the world that the Staff
42 that drafted up these regulations were doing so in good
43 faith and intended -- are doing their best job to carry
44 out the Board's intent. But until the list is actually
45 published and this is in place, we have to live in
46 fear.

47

48 Well, I shouldn't say that. We
49 maintain the level of concern, because the Board, of
50 course, when they did do that extra review on the

1 larger communities such as Kodiak and Bethel, and
2 having that -- getting rid of those aggregations of
3 communities which for our region would have potentially
4 made Napaskiak part of Bethel because people commute,
5 or people from Kwethluk that commute here to work that
6 was incorporated in there before, and now as we
7 understand is gone as part of the criteria.

8
9 The Board did a very good job, and like
10 I said, the intent appears clear. Everything looks
11 good, and I hope we get it in place that will stay a
12 long time. And I believe they've got a good process,
13 and the Board actually worked their way through it in a
14 positive fashion for rural Alaska and for the people
15 that this Title VIII of ANILCA was created for, and the
16 subsistence preference.

17
18 Thank you. I don't know if you have
19 any questions I can try to.....

20
21 MR. MCKEE: Anybody else fill out one
22 of these or want to testify.

23
24 (No comments)

25
26 MR. MCKEE: Still have plenty of time.
27 Anybody on the phone that would like to testify.

28
29 (No comments)

30
31 MR. MCKEE: Well, if that's it, I guess
32 I've called on everybody now that indicated they wanted
33 to talk. I mean, I've already said this is not the
34 only forum that you can make comments. But if there's
35 not going to be any further comment, then I guess I can
36 close this meeting.

37
38 But again I want to reiterate that you
39 can submit written comments after this meeting until
40 April 1st of this year. And all of the addresses and
41 instructions for submitting comments -- we have
42 somebody?

43
44 PUBLIC: I just want to ask you, what
45 part of the of the Alaska does the Federal Subsistence
46 Board carry out on the regulations and what not. How
47 they -- how does the Federal Subsistence Board serve
48 Alaska. My question.

49
50 MR. MCKEE: Well, that's a good

1 question, fairly broad. He wanted to know how the
2 Federal Subsistence Board serves Alaska. Really I
3 think the best way that I can put that is that they --
4 the Federal Subsistence Board is made up of all the
5 major Federal land management agencies in the State.
6 BLM, Fish and Wildlife Service, Park Service. And
7 they're the actual decisionmaking body of the Federal
8 subsistence program, but they're also very responsive
9 to the Regional Advisory Councils like this one here.
10

11 And the Regional Advisory Councils are
12 really the part of the Federal program that really
13 drive subsistence. We like to say that this is a
14 bottom up program, so it's run by the people, and the
15 people are represented by the members of the Regional
16 Advisory Councils. And the Federal Board is required
17 under ANILCA to defer to the Regional Advisory Councils
18 with very few exceptions. And so I think that the rate
19 of deferral is something on the order of 95 percent.
20 So it's the Regional -- it's actually the Regional
21 Advisory Councils that really drive the program.
22

23 But the Federal Subsistence Board is
24 the actual decisionmaking body. So when they actually
25 -- when we actually get through analyzing any of the
26 wildlife proposals that we get this year, or in the
27 next year the fisheries proposals, they're the ones
28 that actually make the decisions whether to approve a
29 proposal or not. But those proposals have already gone
30 through all these Regional Advisory Councils before
31 they ever get to the Board. So the Federal Subsistence
32 Board serves all of Alaska in the sense that they serve
33 all of the regions in which there's Federal land. And,
34 of course, in Alaska that's everywhere.
35

36 So I don't know if that answered your
37 question or not.
38

39 PUBLIC: What I'm trying to say is I'm
40 trying to find out if they can help us out on the
41 bycatch areas like halibut and salmon on the high seas.
42

43 MR. MCKEE: Well, the Federal
44 Subsistence Board itself doesn't have any jurisdiction
45 or authority on bycatch. That is Department of
46 Commerce. So they don't have any direct regulatory
47 authority over bycatch, so that's not something that
48 you would go through the Federal Subsistence Board to
49 affect any real change on. They're only concerned with
50 subsistence uses of fish and wildlife resources on

1 Federal lands.

2

3 PUBLIC: Okay. Thank you.

4

5 MR. ROCZICKA: Actually I did ask a
6 question in my comments there that I didn't follow up
7 on to get an answer to. What is going to be the
8 process for coming up with criteria for who is going to
9 be determined nonrural. What is that process going to
10 be?

11

12 MR. MCKEE: Well, that's -- we're in
13 the process of finding out, you know. We're gathering
14 the comments to figure out what that is. We're not
15 coming into any decision -- no decisions have been made
16 yet, so the Board is waiting for all of these public
17 meetings to take place and get comments from the people
18 that wanted to testify to determine those things. But
19 like Pippa said, it's going to be similar -- we're
20 going to go through the same proposal process that we
21 do for fish and wildlife regulations. So in terms of
22 specific criteria, I don't know if I answered your
23 question.

24

25 Carl, I don't know if that's -- I'm not
26 able to answer it, but -- yeah, Pippa.

27

28 MS. KENNER: Okay. So based on the
29 information that the Board got through the public
30 comment process, it elected to recommend a
31 simplification of the process by determining which
32 areas or communities are nonrural in Alaska. And all
33 other communities or areas would therefore be rural.

34

35 MR. ROCZICKA: I understand, but.....

36

37 MS. KENNER: The Board would make
38 nonrural determinations using a comprehensive approach
39 that takes in to consideration population size and
40 density, economic indicators, military presence,
41 industrial facilities, use of fish and wildlife, degree
42 of remoteness and isolation, and any other relevant
43 material and information provided by the public. The
44 Board would rely heavily on the recommendations of the
45 Subsistence Regional Advisory Councils.

46

47 The proposal -- right now, according to
48 the information in the Federal Register notice, the
49 Board will accept proposals to deliberate on the
50 nonrural status of communities.

1 MR. ROCZICKA: So all areas that are
2 now currently designated as nonrural would
3 automatically all within that, and any other
4 communities that are currently listed as rural will
5 remain so until such time as a proposal is submitted.
6 That is what I understood the Board's action to be last
7 year.

8
9 MS. KENNER: Yes, that's what the Board
10 has told us. That's their recommendation.

11
12 MR. ROCZICKA: I know what the intent
13 was. They did a very good job, but I'm worried that
14 maybe I'm not reading something in between the lines.

15
16 MS. KENNER: There is -- at this point,
17 there isn't anything that has indicated -- the Board
18 has not indicated to us that there will be criteria.

19
20 MR. MCKEE: If anything, it seems in my
21 mind that we're now more responsive, now the role of
22 the Regional Advisory Councils is really a critical
23 aspect of this just like they already are in the
24 regular fish and wildlife proposal process. And it's
25 simplified. It's streamlined.

26
27 Carl.

28
29 MR. JOHNSON: Yeah. So that's a point
30 I wanted to make as well. You know, we have all these
31 -- the criteria that are in Secretarial regulations,
32 that this approach would get rid of completely. So
33 there would not be any set criteria that each region
34 would have to follow. Instead it will be up to the
35 Regional Advisory Council and whomever wanted to make a
36 change to make a point to that Council. It will be up
37 to them to develop a record that explains why they make
38 a recommendation as to an area is rural or nonrural,
39 allowing each region to come up with its own values as
40 to what it considers nonrural.

41
42 You know, for example, with the
43 Kodiak/Aleutians region, you have a lot of communities
44 that are -- it's a very island-based system. So you
45 have a lot of communities that exist on islands. And
46 they think for them that makes them very unique, and it
47 provides a very different identity for what rural
48 means, as opposed to what rural means in the Y-K Delta.

49
50 So you in this region would make a

1 record on the Council's meeting to define for
2 yourselves what are the factors that you consider when
3 making a decision as the Council would on what area is
4 nonrural, because really again you're only have to
5 figure out -- you only have to identify what area is
6 nonrural. You don't have to defend an area's rural
7 status.

8

9 It kind of flips it on head. You know,
10 right a community has to defend its rural status, but
11 under the new approach, the burden would be on proving
12 an area is nonrural, and then everybody else won't have
13 to worry about their rural status.

14

15 MR. ROCZICKA: Yeah, and I again
16 understand that, but I just wanted to express a
17 reservation on the record that maybe that might not
18 happen for some kind of technical reason. But just to
19 be clear everybody who is currently designated, all
20 communities that are currently designated as rural will
21 remain rural until such time as a proposal is brought
22 forward to change their status.

23

24 MR. MCKEE: Correct.

25

26 MR. ROCZICKA: Thank you.

27

28 MR. JOHNSON: Well, and I'll add though
29 that that's a separate process from what we're doing
30 here. Here we're just finalizing how nonrural
31 determinations will be made in the future. The next
32 step is going to be that by May 2017 the Board has to
33 publish that new list, proposed list of what the rural
34 and nonrural. So that's ahead to the next step. And
35 again there will be a full public process on that.
36 Right now we're just focusing on just how those
37 decisions will be made in the future.

38

39 MS. KENNER: And, Greg, after the
40 Secretarial review, the Board met on January 20th 2012
41 to consider the Secretarial directive, consider the
42 Councils' recommendations and review all the public and
43 other comments that came in in the initial review of
44 the rural determination process. After discussion and
45 careful review, the Board voted unanimously to initiate
46 a review of the rural determination process, and the
47 2010 decennial review. Consequently both -- based on
48 that action, the Board found that it was in the
49 public's best interest to extend the compliance date of
50 its 2007 final rule on rural and nonrural

1 determinations until after a review of the rural
2 determination process and the decennial review -- until
3 after the review of the rural determination process and
4 the decennial review are complete, or in five years,
5 whichever comes first. The Board published a final
6 rule extending the compliance date.

7

8 So now we're going through that process
9 and if nothing has changed before March 2017, the 2007
10 rule on rural and nonrural will go into effect.

11

12 MR. ROCZICKA: Okay.

13

14 MS. KENNER: And there will be an --
15 and changes will occur.

16

17 MR. MCKEE: So I just want to check one
18 more time, that if -- does anybody want to come up and
19 testify and comment.

20

21 (No comments)

22

23 MR. MCKEE: Anybody else on the phone.

24

25 (No comments)

26

27 MR. MCKEE: Okay Well, thanks
28 everybody for coming out and participating in the
29 process tonight. The Federal Subsistence Board is
30 looking forward to the comments on this issue from the
31 tribes, ANCSA corporations, and the general public.
32 And after all comments are received and evaluated, then
33 the final rule on the rural determination process will
34 be adopted by the Secretaries of the Interior and
35 Agriculture. The next step will be where the Federal
36 Subsistence Board makes the actual rural determinations
37 based on that final rule.

38

39 So thanks everyone for coming out
40 tonight, and again there are other ways to submit your
41 comments written, so that information is back there.

42

43 Yes, Lester.

44

45 MR. WILDE: You mentioned that the
46 Board will be accepting written comments?

47

48 MR. MCKEE: Correct.

49

50 MR. WILDE: Could you also give us the

1 address for those written comments, where.....

2

3 MR. MCKEE: I believe it's.....

4

5 MR. WILDE:to send those or where
6 (Indiscernible - away from microphones).

7

8 MR. JOHNSON: Yeah. So on the table in
9 the back there next to the sign-in sheet there's a
10 Federal Register notice, but there's also a news
11 release. And both of those have information on how you
12 can provide written comments.

13

14 MR. WILDE: Thank you.

15

16 MR. MCKEE: Thank you. Thanks for
17 everyone coming out tonight.

18

19 (Off record)

20

21

22 (END OF PROCEEDINGS)

